

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MEASURE INDEFINITELY
POSTPONED—S.J. RES. 16

Mr. REID. Madam President, I ask unanimous consent that the Calendar No. 108, S.J. Res. 16, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NEED-BASED EDUCATIONAL AID
ACT OF 2001

Mr. REID. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 768 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 768) to amend the Improving America's School Act of 1994 and make permanent favorable treatment of need-based educational aid under the antitrust laws.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1844

Mr. REID. Madam President, I understand that Senator KOHL has a substitute amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KOHL, proposes an amendment numbered 1844.

Mr. REID. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Need-Based Educational Aid Act of 2001".

SEC. 2. AMENDMENT.

Section 568(d) of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) is amended by striking "2001" and inserting "2008".

Mr. KOHL. Madam President, I rise today to offer a substitute amendment to H.R. 768. This legislation, as amended, will extend for seven years an existing antitrust exemption granted to colleges and universities that admit students on a need blind basis. The exemption provides protection for these schools to cooperatively develop a methodology for determining financial need in order to best assess a family's ability to pay the costs of attendance.

There is no doubt that higher education opens doors and creates oppor-

tunities. It is therefore imperative that we in Congress do what we can to keep higher education affordable for our nation's students and their families. Some of the best and most prestigious colleges and universities admit students without regard to their financial need, allowing talented students from disadvantaged backgrounds to achieve their full potential. This exemption allows those colleges and universities to generate a uniform methodology to determine a family's need. The colleges and universities that use the exemption believe it allows them to attract needy students and maintain a thriving financial aid program.

Discussions among colleges and universities using need-blind admissions policies began more than thirty years ago. However, in 1989, the Department of Justice filed suit against 23 colleges and universities alleging that their cooperation violated antitrust laws. A federal district court ruled that the schools were subject to the antitrust laws. In 1991, most of the colleges and universities settled with the Department of Justice with a promise to stop sharing information.

Faced with the prospect of eliminating their discussions as a result of the settlement, the colleges and universities sought a law allowing them to meet. In 1992, Congress passed the original two-year antitrust exemption for those schools that guaranteed that their aid was need-blind. The exemption was extended in 1994 and 1997. With the lawsuit and the court order so fresh in our collective memory, it seems prudent to extend the exemption for a reasonable length of time, but not indefinitely. The exemption has always been granted on the theory that cooperation among universities in determining financial aid need benefits prospective students and their families. But there is little if any objective data to support this proposition. So this amendment directs the General Accounting Office (GAO) to study the effects of the antitrust exemption on undergraduate grant aid. The study will require schools who participate in discussions under the antitrust exemption to maintain and submit records. While the study will be comparative, schools that do not participate in discussions permitted by the exemption will not be required to maintain or submit records.

As a general rule, I strongly oppose antitrust exemptions. Our antitrust laws guarantee competition, and competition means lower prices and higher quality for consumers—including students purchasing a college education. But the colleges and universities using the exemption believe that the market functions differently in this case. I am therefore willing to extend the exemption for another seven years but believe that any further activity in this area must be coupled with hard objective data providing that this exemption

does indeed benefit students and their families. Too many families are struggling today to put their children through college. So we must act very carefully and with full information before we pass a permanent antitrust exemption.

I would like to thank Representatives LAMAR SMITH and BARNEY FRANK and their staffs for their work on this legislation in the House, and Senators DEWINE, LEAHY, and HATCH and their staffs for their assistance on this substitute amendment. We hope the House will agree to these changes and expeditiously send this legislation to the President for his signature.

Mr. LEAHY. Madam President, I appreciate the work that Senators KOHL and DEWINE have done on this bill. I want to point out that while this bill extends the antitrust exemption for participating institutions' methodologies and applications for need-based financial aid, that exemption is still limited to the institutions' dealings with potential students collectively. It has not, and does not, exempt those institutions from the prohibitions of the Sherman Act, 15 U.S.C. 1, with respect to awards to specific individual students. Independent of any antitrust concerns, the participating institutions also assure us that they do not discuss or compare awards for individual students, and we rely on their continuing that practice.

Mr. REID. Madam President, I ask unanimous consent that the substitute amendment be agreed to, the bill be read a third time and passed, the motion to reconsider be laid upon the table and any statements relating to the bill be printed in the RECORD, and that the title amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1844) was agreed to.

The bill (H. R. 768), as amended, was passed.

The title was amended so as to read:

An Act to amend the Improving America's Schools Act of 1994 to extend the favorable treatment of need-based educational aid under the antitrust laws, and for other purposes.

ORDERS FOR THURSDAY, OCTOBER
4, 2001

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 10 a.m., Thursday, October 4; further, that on Thursday, immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of the motion to proceed to S. 1447, the aviation security bill.